

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NICKOLAS A. BAUM and)	
BRIANNA J. BAUM,)	
)	
Plaintiffs,)	Civil Action No. 21-944
)	
v.)	Judge Cathy Bissoon
)	
JACOB SCHLESINGER, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Defendants Jacob Schlesinger and Denise Moore’s (“Sellers”) Motion to Dismiss (Doc. 65) Defendant Premier Bank’s (“Bank”) crossclaim will be granted.

The Bank cannot anchor its “Liability over” crossclaim to Plaintiffs Nicolas A. Baum and Brianna J. Baum’s (“Buyers”) common-law indemnity claim against Sellers. Opp’n Br. (Doc. 76) at 4–5. This is so because Buyers’ only claim against the Bank is breach of the Residential Construction Loan Agreements, which Sellers are not parties to. *See Higgins Erectors & Haulers, Inc. v. E.E. Austin & Son, Inc.*, 714 F.Supp. 756, 759 (W.D. Pa. 1989) (no right to indemnification where litigant’s “liability arises solely out of its contract with [another party] and in no way is it secondary to the wholly unrelated alleged liability of [a third party] which is based upon an entirely separate contract.”).

Nor does the Bank’s attempt to recast the crossclaim to include “both contribution and indemnification[,]” Opp’n Br. at 4, fare any better. *See Kemper Nat’l P & C Companies v. Smith*, 615 A.2d 372, 380 (Pa. Super. 1992) (“Pennsylvania only authorizes contribution among joint tortfeasors.”); *EQT Prod. Co. v. Terra Servs., LLC*, 179 F. Supp. 3d 486, 493 (W.D. Pa. 2016) (“[C]ontribution is not available for breach of contract claims.”).

As to contractual indemnity, the Bank’s contention that it “has a contractual right to indemnification which is transmitted through . . . Buyers,” Opp’n Br. at 3, again, ignores that Sellers are not parties to the Residential Construction Loan Agreements. *See* Sellers’ Reply Br. (Doc. 80) at 4 (“[T]he Bank does not cite a single case to support its novel argument that nonparties to a contract could owe contractual indemnity obligations under it.”).

Consistent with the foregoing, Sellers’ Motion to Dismiss (**Doc. 65**) the Bank’s Crossclaim is **GRANTED**.

IT IS SO ORDERED.

July 20, 2023

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):
All Counsel of Record